

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B06

PLR-150967-13

Date:

June 11, 2014

In Re:

LEGEND

Taxpayer=

Law Firm=

Accounting Firm=

Individual 1=

Individual 2=

Individual 3=

Company A=

Company B=

Year 1=

Year 2=

Year 3=

Date 1=

Date 2=

Date 3=

Date 4=

Date 5=

Dear :

This responds to a letter dated December 13, 2013, supplemented by letters dated April 25, 2014, and May 8, 2014, submitted by Law Firm requesting that the Internal Revenue Service ("Service") grant Taxpayer an extension of time under Treas. Reg.

§§ 301.9100-1 and 301.9100-3 to file Form 4876-A ("Election To Be Treated as an Interest Charge DISC") for Taxpayer's first taxable year.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and Law Firm and accompanied by affidavits and penalty of perjury statements executed by appropriate parties. This office has not verified any of the materials submitted in support of the request for rulings. It is subject to verification on examination.

FACTS

Taxpayer is a domestic corporation owned by Individual 1, Individual 2, and Individual 3. Individual 1, Individual 2, and Individual 3 own Company A. Individual 1, Individual 2, Individual 3, and Company A own Company B.¹ Taxpayer was formed on Date 1 for the sole purpose of qualifying and operating as an interest charge domestic international sales corporation ("IC-DISC"). Taxpayer operates under commission arrangements with Company A and Company B.

In Year 1, Law Firm and Accounting Firm advised Individual 2 of the benefits associated with operating an IC-DISC. After deciding to form Taxpayer as an IC-DISC, Law Firm and Accounting Firm advised Individual 2 of the compliance requirements to qualify Taxpayer as an IC-DISC, including the requirement to file Form 4876-A. Accounting Firm prepared Form 4876-A and mailed it to Individual 2 on Date 2 at Taxpayer's corporate office with instructions on how to complete and mail the form to the Service. Further, on Date 3, Law Firm mailed a letter to Individual 2 at Taxpayer's corporate office explaining that Form 4876-A must be filed within 90 days of Date 1. These letters were misplaced once they arrived at Taxpayer's corporate office and were not brought to the attention of Individual 2. As a result, the Form 4876-A was not timely filed. However, believing all the requirements to conduct business and be treated as an IC-DISC for its first taxable year were satisfied, Taxpayer began operating as an IC-DISC on Date 1.

On Date 4, which was beyond the period required to timely file Form 4876-A, the letters from Law Firm and Accounting Firm were brought to the attention of Individual 1. Immediately thereafter, the Form 4876-A was completed and filed with the Service. In Year 2, Taxpayer filed its first federal income tax return using Form 1120-IC-DISC. Taxpayer represents that it did not receive any notification from the Service rejecting the filing of its Form 4876-A or its Form 1120-IC-DISC for Year 2. As a result, in Year 3, Taxpayer timely filed its federal income tax return for Year 2 using Form 1120-IC-DISC. On Date 5, Taxpayer received a notice from the Service stating that Taxpayer was not eligible to file a Form 1120-IC-DISC because Taxpayer had failed to timely file Form 4876-A.

In order to operate as an IC-DISC beginning on Date 1, Taxpayer requested a ruling granting an extension of time to file Form 4876-A for its first taxable year.

¹ Taxpayer, Company A, and Company B are owned or controlled directly or indirectly by the same interests within the meaning of Treas. Reg. § 1.482-1.

LAW AND ANALYSIS

Section 992(b)(1)(A) of the Internal Revenue Code (the “Code”) provides that an election by a corporation to be treated as a DISC² shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

Section 992(b)(1)(B) of the Code provides that such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on such first day of the first taxable year for which such election is effective consent to such election.

Temporary Treasury Regulation § 1.921-1T(b)(1) provides, in part, that a corporation electing IC-DISC status must file Form 4876-A and that a corporation electing to be treated as an IC-DISC for its first taxable year shall make its election within 90 days after the beginning of that year.

Treasury Regulation § 301.9100-1(c) provides, in part, that the Commissioner, in exercising the Commissioner’s discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Treasury Regulation § 301.9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. For this purpose, an election includes an application for relief in respect of tax.

Treasury Regulation § 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Government.

Based on the facts and representations submitted with Taxpayer’s ruling request, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file Form

² As used in this letter, the terms “IC-DISC” and “DISC” have the same meaning.

4876-A. Such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year.

The granting of an extension in this ruling letter is not a determination that Taxpayer is otherwise eligible to make the election or to claim IC-DISC status or benefits. See Treas. Reg. § 301.9100-1(a). Taxpayer should attach a copy of this ruling letter to its Federal income tax return for the taxable years to which this letter applies.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

Pursuant to a Power of Attorney on file in this office, copies of this ruling letter are being furnished to your authorized representative.

Sincerely,

Joseph Dewald
Senior Technical Reviewer, Branch 6
Office of Associate Chief Counsel (International)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes